

MEMORANDUM FOR: IPD Case Officers

FROM:

Chief, Information and Privacy Division

SUBJECT:

Implementation of Executive Order 12356

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1. I have quickly reviewed the new Executive Order 12356 and the implementation guidance provided by the Information Security Oversight Office (ISOO). A copy of that analysis is attached. I believe it is important that the Information and Privacy Division (IPD) concern itself with the implementation of this E.O. as soon as possible.

2. At this point in time, it looks like we will clearly have to update the Code of the Federal Register, change our handbook and change some of the language in our letters to requesters. I think it is also important that IPD understand the changes suggested by the new E.O. as it bears on the review process which occurs in the various Agency components. We do have some responsibility to provide guidance to the components on review procedures for handling requests. This usually involves not more than answering any questions they might have.

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3. I am asking to head an implementing team and get together exactly what needs to be done, develop guidance, and start the process of implementing any changes.

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Attachment:  
As stated

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MEMORANDUM FOR THE RECORD

SUBJECT: Executive Order 12356

1. I have looked at the two major sections in the new Executive Order 12356 which impact upon the Information and Privacy Division (IPD). The following items identify what I perceive to be the major differences between E.O. 12065 and the new E.O. in the mandatory review and the historical access sections.

Section 3.4 - Mandatory Review for Declassification

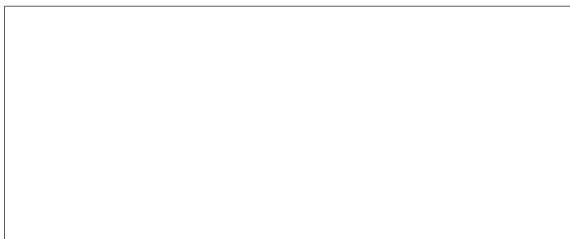
- ° Requests for mandatory review can now be made only by U.S. citizens and resident aliens.
- ° Requesters must now describe the document with sufficient specificity to enable the Agency to locate it with a reasonable amount of effort. Previously, the requester had to reasonably describe the information. (This new language means we will have to conduct searches as we do under FOIA.)
- ° While the E.O. provides no time limits for processing requests, the guidance given by ISOO indicates some tight time constraints. (I have already written OGC on this matter, suggesting they seek to get these changed.)
  - For those requests requiring less than eight hours of search and review time, the Agency has ten working days to make their declassification determinations.
  - Requests requiring more than eight hours ought to be answered "promptly" or the requester shall be informed of any additional time needed.
  - In no case shall the Agency response exceed one year.
- ° The ten year requirement on White House information is lifted and broadened. Now information which provides "advise and counsel to a President is exempted . . . "
- ° Greater authority is given to the Archivist to review and downgrade information under the control of GSA. Consultation with the appropriate agency, however, is maintained.

- Appeal of Archivist's decision to ISOO is maintained.
- Agencies themselves, rather than D/ISOO, are to develop procedures under processing mandatory review of classified information.
- The DCI is instructed to develop specific procedures for the review of information pertaining to intelligence activities and sources and methods after consultations with affected agencies.
- The E.O. clearly permits an Agency to now refuse to confirm or deny the existence or nonexistence of requested information in response to requests under the Freedom of Information Act, Privacy Act, and E.O. 12356.
- The E.O. sustains the option of informing the requester of the identity of other government agencies to which documents have been referred.

Section 4.3 - Access by Historical Researchers and  
Former Presidential Appointees

There are few changes in this section of the E.O. However, those which are made serve to tighten up the process whereby the Agency grants access to historical researchers and former Presidential appointees. The significant changes are listed below:

- Access is now to be granted only as is essential, rather than necessary to the accomplishment (vice performance) of authorized and lawful government purposes (vice official duties).
- Waivers are granted now by the originating agency rather than by the agency with jurisdiction over the information. This requirement would prevent another government agency, who has control of our documents, from granting access to them.



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